IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 708 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAMODBHAI SEVAKLAL SHAH - Petitioner(s)
Versus
DY.SECRETARY & 3 - Respondent(s)

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Appearance :
MR YATIN SONI for Petitioner(s) : 1,
Falguni Patel Asstt. GoverRNMENT PLEADER for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.C.PATEL

Date : 03/08/2006

ORAL JUDGMENT

Shri Mahalaxmi Co-operative Credit Society Ltd., respondent no. 3 passed a resolution expelling the petitioner from the membership of the society.

However, the said resolution was disapproved by District Registrar, Co-operative Societies, Vadodara under Section 36 of the Co-operative Societies Act. The society filed appeal before the Additional Registrar (Appeal), Co-operative Societies, Gandhinagar. The said appeal came to be dismissed for default on 26.2.99. It appears that the society filed a restoration application but the same was dismissed. The society, therefore, filed a Revision Application No. 183/99 under section 155 of the Act before the Government. A copy of the memo of revision is at Annexure A. The prayer made in para 6 of the memo of Revision application is as under

" (A) Your Honour be pleased to call for R & P of Appeal No. 142 of 1996 from the office of the learned opponent No. 1 and after perusing the legality and propriety of the order passed below Restoration Application dated 16.7.99, be pleased to quash and set aside the same and the Appeal No. 142 of 1996 be restored. "

Thus the prayer in the Revision Application was for restoration of the appeal which had been

dismissed for default. However, the Revisional authority by order dated 1.1.2000 allowed the Revision Application on merits and set aside the order of the District Registrar had dated 26.9.96 whereby the Registrar disapproved the resolution of the society. The petitioner has, therefore, filed this petition challenging the said order of the Revisional authority.

The learned counsel for the petitioner has rightly contended that the only prayer before the Revisional authority was for restoration of the appeal filed by the society which had been dismissed for default. The Revisional authority, instead of dealing with the question as to whether the order of dismissal for default was justified or not, proceeded to consider on merits the order of the District Registrar refusing to grant approval of the resolution of the society and set aside the same. All that the Revisional authority could have done was to set aside the order of the Additional Registrar (Appeal) dismissing the appeal for default and restore the same, if it was satisfied that the order of dismissal for default was not justified.

In the circumstances, the petition deserves to be and is, accordingly, allowed. The impugned order of the Deputy Secretary (Appeal) is set aside and the matter is remanded to the Revisional authority, who shall, after giving an opportunity of hearing to the parties concerned, decide the Revision Application No. 183/99 filed by the respondent No. 3 society in accordance with law. Rule is made absolute accordingly.

(M.C.Patel,J)

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